

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Matthew Thomas Pickens, # 151245,
aka Matthew T. Pickens,

Plaintiff,

vs.

United States Department of Justice;
Federal Bureau of Investigation;
Janice Galli McLeod, *Associate Director of the USDOJ*,
and
Kevin F. McDonald, *Assistant United States Attorney*,

Defendants.

) **C/A No. 2:11-1168-RBH-JDA**

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Report and Recommendation
for
Partial Summary Dismissal

This case is filed by a state prisoner seeking FBI reports relating to his request for a criminal investigation. This case is styled as an action seeking federal court review of an agency's denial of a request under the Federal Freedom of Information Act (FOIA). Plaintiff has sought copies of FBI records relating to his request for a federal criminal investigation of the Circuit Court for Anderson County and the State of South Carolina's unified judicial system.

In an order [ECF No. 9] filed in this case on May 18, 2011, the undersigned directed Plaintiff to submit summonses and Forms USM-285. Plaintiff has done so. Hence, the above-captioned case is now "in proper form."

Two of the named defendants are not proper defendants in an action seeking federal court review of a denial of a request under the FOIA. See *Benavides v. Bureau of Prisons*, Civil Action No. 09-2026 (JEB), ___ F. Supp. 2d ___, 2011 WL 1195800, *1 n. 1 (D.D.C. March 30, 2011) (“The DOJ is an executive agency to which the FOIA applies, and the Court considers the DOJ as the proper party defendant.”); and *Reich v. U.S Dept. of Energy*, Civil Action No. 09-10883-NMG, ___ F. Supp. 2d ___, 2011 WL 977602 (D. Mass. March 17, 2011) (Oak Ridge National Laboratory not federal agency for purposes of the FOIA). As a result, Janice Galli McLeod, *Associate Director of the USDOJ*, and Kevin F. McDonald should be dismissed from this action *without prejudice* because they are not “proper defendants” in an action under the FOIA.

Recommendation

Accordingly, it is recommended that the District Court summarily dismiss Janice Galli McLeod and Kevin F. McDonald as defendants in the above-captioned case *without prejudice* and without service of process. Plaintiff’s attention is directed to the Notice on the next page.

May 31, 2011
Greenville, South Carolina

s/Jacquelyn D. Austin
Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The plaintiff is advised that he may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (*quoting* Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Larry W. Propes, Clerk of Court
United States District Court
300 East Washington Street — Room 239
Greenville, South Carolina 29601**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).